
January 1999

FEDERAL JUDICIARY

Information on the Use of Recalled Magistrate and Bankruptcy Judges



General Government Division

B-280364

January 15, 1999

Honorable Jack Reed
United States Senate

Dear Senator Reed:

As you requested, this report discusses the federal judiciary's use of recalled magistrate judges and bankruptcy judges. Recalled judges are retired magistrate and bankruptcy judges who, with their consent, return to judicial duties for a specified period of time. The use of recalled judges is one option district courts and bankruptcy courts have for obtaining temporary judicial assistance when they are experiencing a temporary workload increase, have one or more judgeship vacancies, or for other reasons.¹

Specifically, as agreed with your office, our objectives were to determine (1) whether the demand for recalled magistrate and bankruptcy judges has exceeded the number of judges available to serve in recalled positions, (2) whether the courts that recalled judges had judgeship vacancies and/or higher than average weighted case filings,² and (3) the approximate 1-year cost savings associated with using a recalled judge rather than filling a full-time judgeship position.

Results in Brief

During the period from October 1, 1989, through April 30, 1998, all of the district courts and all but one of the bankruptcy courts whose requests for recalled judges had been approved by the circuit judicial councils³ were able to obtain the services of a recalled judge.⁴ During this period, 25 of the

¹ The courts can also use visiting judges from other districts. Visiting judges are usually active (nonretired) judges from other courts who are assigned to provide assistance to a requesting court for a specified period of time. Visiting judges may be from within the same judicial circuit as the requesting court (intracircuit assignments) or from outside the judicial circuit (intercircuit assignments). District courts and bankruptcy courts are organized in 12 geographic circuits whose boundaries are defined by statute. There is also a court of appeals for the federal circuit, but this circuit has no role in magistrate and bankruptcy judge recalls.

² Weighted case filings represent a measure of the average amount of judicial time that a district or bankruptcy court's filings may require.

³ Each circuit has a Judicial Council of the Circuit that is statutorily charged with making all necessary and appropriate orders for the effective and expeditious administration of justice within the circuit. The council consists of equal numbers of active court of appeals judges and active district court judges within the circuit, plus the chief judge of the circuit, who is the presiding officer.

⁴ Administrative Office of the U.S. Court's (AOUSC) data excluded recall appointments made on or after October 1 that expired prior to September 30 in each fiscal year, from 1990 to 1997. AOUSC's data also excluded any recall appointments made on or after October 1, 1997, that expired prior to April 30, 1998. Thus, these data may have excluded some short-term appointments that expired prior to the end

92 district courts with magistrate judges and 33 of the 90 bankruptcy courts used at least 1 retired magistrate or bankruptcy judge. The single bankruptcy court whose approved request was not filled had requested the appointment of two recalled bankruptcy judges in 1993. One appointment was made, and data were not available on why the second appointment was not made. One possible reason is that Congress had authorized two additional bankruptcy judgeships for this court in 1992.

In considering whether the demand for recalled judges exceeded the number of judges available to serve in recall appointments, it is important to note that the 111 recalled magistrate judge appointments and the 159 recalled bankruptcy judge appointments were filled by a relatively small number of eligible judges who were often reappointed to their recalled positions one or more times. A total of 96 magistrate judges and 60 bankruptcy judges were eligible for recall for at least part of the period covered by our review. The recall appointments were filled by 33 separate retired magistrate judges and 43 separate retired bankruptcy judges.

District courts or bankruptcy courts that recalled judges showed no clear pattern of judgeship vacancies, and bankruptcy courts that recalled judges showed no clear pattern of weighted case filings. Some district courts or bankruptcy courts used recalled judges for at least a portion of the time the court had a magistrate judgeship or bankruptcy judgeship vacancy, while other district courts or bankruptcy courts with magistrate judgeship or bankruptcy judgeship vacancies did not use recalled judges.

The bankruptcy courts that used recalled judges during the period of our review had widely varying weighted case filings. For those bankruptcy courts that recalled bankruptcy judges, the weighted case filings ranged from 619 to 2,144 per bankruptcy judgeship in fiscal year 1992 and from 639 to 2,321 in fiscal year 1997. National average weighted filings per bankruptcy judgeship were 1,437 in fiscal year 1992 and 1,436 in fiscal year 1997.

The Judicial Conference has not adopted case weight measures for magistrate judges. However, at your request, we are providing information on district court weighted case filings, which were developed to measure the case filings workload of district judges, not magistrate judges.

of the fiscal year. However, both AOUSC officials and the circuit executives we interviewed said the data we received would have excluded few recalls because there have been few recall appointments of less than 1 year.

According to Administrative Office of the U.S. Courts (AOUSC) data, recalled magistrate and bankruptcy judges are less costly than full-time nonretired judges. The estimated fiscal year 1999 annual recurring cost of a full-time nonretired magistrate judge is about \$602,000, and the cost of a full-time bankruptcy judge is about \$575,000. These costs include the salaries and benefits of the judge and his or her support staff, space, equipment, and facilities. In contrast, AOUSC data indicated that the average annual cost of a recalled magistrate judge ranged from about \$87,000 to about \$253,000. The average annual cost of a recalled bankruptcy judge ranged from about \$93,000 to about \$241,000. The lower cost figures represent the average annual cost of a recalled magistrate or bankruptcy judge who retired at full salary and whose sole personal staff is a full-time secretary. The higher cost figures represent a recalled magistrate or bankruptcy judge who did not retire at full salary, earns about \$32,000 annually while on recall, and has a full staff.

Background

Ninety-two of the 94 federal district courts include district court judges and magistrate judges.⁵ District court judges generally are appointed for life⁶ and exercise the full range of judicial authority vested in the district courts. Magistrate judges are appointed for a fixed term of years to either full- or part-time positions.⁷ Magistrate judges exercise the judicial duties permissible by statute and the Constitution that the district courts delegate to them. Generally, a district court assigns magistrate judges all misdemeanor criminal cases⁸ and the conduct of preliminary proceedings in felony criminal cases.⁹ In civil cases, magistrate judges may also supervise pretrial proceedings. In addition, with the consent of the parties in the case, magistrate judges may preside over all phases of a civil suit, including trial, and render a decision in the case.

⁵ The district courts in the U.S. territories of Guam and the Northern Mariana Islands do not have magistrate judges.

⁶ Judges appointed to the district courts in the U.S. territories of Guam, the Northern Mariana Islands, and the Virgin Islands are appointed for 10-year terms.

⁷ Full-time magistrate judges are appointed for 8-year terms and part-time magistrate judges for 4-year terms.

⁸ Generally, those federal crimes that carry a maximum penalty of imprisonment of 1 year or less.

⁹ Generally, those federal crimes that carry a maximum penalty of imprisonment of more than 1 year.

With some exceptions, the 90 federal bankruptcy courts preside over all bankruptcy cases filed in the United States.¹⁰ Bankruptcy judges are appointed for 14-year terms and are appointed only to full-time positions.

Eligible retired magistrate and bankruptcy judges may be recalled to judicial service with their consent. With a few exceptions, all retired magistrate and bankruptcy judges are eligible for recall. Retired magistrate and bankruptcy judges who receive an annuity under the Judicial Retirement System (JRS) and elect to practice law are not eligible for recall. Retired magistrate judges who did not retire under JRS, and have elected to practice law after retirement, may continue to practice law if recalled for part-time service, but they may not continue to practice law if recalled to full-time service.

The decision to seek the appointment of a recalled judge rests with the district court or bankruptcy court that determines it needs the services of a recalled judge. The circuit judicial council must approve the request, specify the calendar period of the recall, specify whether the appointment is for full-time or part-time service, and determine the personal support staff, if any, that the recalled judge may have. Additional information on the recall process can be found in appendix I.

Recalled judges are paid a salary that represents the difference between their retirement pensions and the full salary of the office to which they were recalled. For example, a bankruptcy judge who retired in fiscal year 1998 with a pension of \$80,000 and was recalled to full-time service in the same fiscal year would receive annual wages of \$45,764. This is the difference between the judge's pension and the \$125,764 fiscal year 1998 salary of an active bankruptcy judge. A recalled judge who had retired at full salary would receive no additional compensation for recall service. Appendix II provides additional information on the conditions and compensation of recalled judges.

Scope and Methodology

Our objectives were to determine (1) whether the demand for recalled magistrate and bankruptcy judges has exceeded the number of judges available to serve in recalled positions, (2) whether the district and bankruptcy courts that recalled judges had judgeship vacancies and/or higher than average weighted case filings, and (3) the approximate 1-year cost savings associated with using a recalled judge rather than filling a full-

¹⁰ By statute, the district courts retain original jurisdiction over bankruptcy cases. However, with few exceptions, the district courts have adopted a policy of referring all bankruptcy matters to the bankruptcy courts within their respective districts.

time judgeship position. Our review covered the use of recalled magistrate and bankruptcy judges during the period October 1, 1989, through April 30, 1998. We obtained most of the data needed to address our objectives through AOUSC. We requested data by district on the number of retired and recalled magistrate judges and bankruptcy judges, including data by district on the number of retired magistrate and bankruptcy judges who were eligible for recall each year and the number of eligible judges who were actually recalled each year. We reviewed the data AOUSC provided for internal consistency by choosing a judgmental sample of retired and recalled judges, tracing the data back to source documents, and verifying that the data provided matched the data in the source documents. Our judgmental sample included retired and recalled judges from different fiscal years and geographically dispersed district and bankruptcy courts.

We requested data for the same period for magistrate and bankruptcy judgeship vacancies in those district and bankruptcy courts that recalled judges. We requested the weighted case filings of the 94 district courts and 90 bankruptcy courts for fiscal years 1990 through 1997.

We obtained written comments on a draft of this report from AOUSC. These comments are discussed at the end of this letter and are reprinted in appendix VI .

Our work was performed from May 1998 to December 1998 in accordance with generally accepted government auditing standards. Our objectives, scope, and methodology are described in more detail in appendix III.

Data on the Use of Recalled Magistrate and Bankruptcy Judges

A minority of district and bankruptcy courts used recalled judges during the period covered by our review (October 1, 1989, through April 30, 1998). During this period,¹¹ 25 of the 92 district courts with magistrate judges (27.2 percent) and 33 of the 90 bankruptcy courts (36.7 percent) recalled at least 1 judge (see figs. 1 and 2). However, at least 1 district court and 1 bankruptcy court in each of the 12 regional circuits had recalled a judge during this period.

¹¹ Data on recalled judges are as of September 30 for fiscal years 1990 through 1997, and April 30, 1998, for fiscal year 1998.

Figure 1: Twenty Five District Courts, by Circuit, That Had a Recalled Magistrate Judge on Duty at the End of One or More Fiscal Years, 1990-1997, or as of April 30 1998



Note: C = central; M = middle; N = northern; W = western; S = southern; E = eastern

Source: GAO analysis of AOUSC data.

Figure 2: Thirty-Three Bankruptcy Courts, by Circuit, That Had a Recalled Bankruptcy Judge on Duty at the End of One or More Fiscal Years, 1990-1997, or as of April 30, 1998



Note: C = central; M = middle; N = northern; W = western; S = southern; E = eastern

Source: GAO analysis of AOUSC data.

The 25 district courts that recalled magistrate judges appointed eligible judges to a total of 111 magistrate judge recall positions. The 33 bankruptcy courts had a total 159 bankruptcy judge recall appointments. All of the district courts and all but one of the bankruptcy courts whose requests for recalled judges had been approved during this period were able to obtain the services of a recalled judge. In 1993, the circuit council had approved two bankruptcy judge recall appointments for one bankruptcy court, but only one appointment was made. Data were not available on why the second appointment was not made. One possible reason is that Congress had authorized two additional bankruptcy court judgeships for this court in 1992.

The total number of recalled magistrate judge appointments by a single district over the entire period ranged from 1 to 12. The number of district courts with one or more recalled magistrate judges on duty at the end of the fiscal year increased annually, from 4 in fiscal year 1990 to 16 in fiscal year 1997. The number of recalled magistrate judges on duty at the end of the fiscal year also grew each year (except for 1997). Data by fiscal year and district are shown in appendix IV, table IV.1.

The total number of recalled bankruptcy judge appointments by a single bankruptcy court over the period ranged from 1 to 9. The number of bankruptcy courts with recalled judges on duty at the end of the fiscal year ranged from 10 (fiscal years 1990, 1991, and 1993) to 25 (as of April 30 in fiscal year 1998). The number of recalled bankruptcy judges on duty at the end of the fiscal year more than doubled by the end of fiscal year 1994 (to 23) from the levels it had been in fiscal years 1990, 1991, and 1993. Since the end of fiscal year 1994, the number of recalled bankruptcy judges has remained relatively stable. Additional details are shown in appendix IV, table IV.2.

Number of Eligible Retired Judges Has Exceeded the Number Who Were Recalled

Since fiscal year 1990, the number of retired magistrate and bankruptcy judges and the number of those retired judges who were eligible for recall has grown annually. Each fiscal year during the period covered by our review, at least 80 percent of retired magistrate judges were eligible for recall. In all but 2 fiscal years, 100 percent of retired bankruptcy judges were eligible for recall. For each year covered by our data, the number of magistrate and bankruptcy judges eligible for recall has exceeded the number of judges actually recalled. It must be noted, however, that eligible retired judges may be recalled only with their consent, and not all eligible judges may be willing to accept a recall appointment. The percentage of eligible retired magistrate judges who were recalled ranged from about 16 percent at the end of fiscal year 1992 to about 24 percent at the end of

fiscal year 1996 (see table 1). The percentage of eligible retired bankruptcy judges who were recalled ranged from about 33 percent at the end of fiscal year 1993 to about 56 percent at the end of fiscal year 1990 (see table 2). The number of bankruptcy courts that recalled bankruptcy judges jumped sharply in fiscal year 1994 and has remained relatively stable since then.

Table 1: Magistrate Judges in Retirement Status, Eligible for Recall, and Actually Recalled; and Number of Districts That Recalled Judges, as of September 30, 1990-1997, and April 30, 1998

Date	Number of			Percentage ^a of		Number of districts that recalled judges
	Judges in retirement status	Retired judges eligible for recall	Eligible judges recalled	Retired judges eligible for recall	Retired judges recalled	
09-30-90	23	19	4	83	21	4
09-30-91	37	30	6	81	20	6
09-30-92	51	44	7	86	16	7
09-30-93	57	49	9	86	18	9
09-30-94	71	60	13	85	22	11
09-30-95	87	73	16	84	22	12
09-30-96	100	83	20	83	24	15
09-30-97	112	92	18	82	20	16
04-30-98	119	96	18	81	19	14

^aRounded to nearest whole number.

Source: GAO analysis of AOUSC data.

Table 2: Bankruptcy Judges in Retirement Status, Eligible for Recall, and Actually Recalled; and Number of Courts That Recalled Judges, as of September 30, 1990-1997, and April 30, 1998

Date	Number of			Percentage ^a of		Number of districts that recalled judges
	Judges in retirement status	Retired judges eligible for recall	Eligible judges recalled	Retired judges eligible for recall	Retired judges recalled	
09-30-90	18	18	10	100	56	10
09-30-91	22	22	10	100	46	10
09-30-92	27	27	12	100	44	11
09-30-93	35	33	11	94	33	10
09-30-94	42	42	23	100	55	21
09-30-95	47	47	24	100	51	22
09-30-96	50	50	22	100	44	21
09-30-97	55	55	22	100	40	22
04-30-98	61	60	25	98	42	25

^aRounded to nearest whole number.

Source: GAO analysis of AOUSC data.

The Majority of Recalled Judges Have Served Multiple Recall Terms

The majority of recalled magistrate and bankruptcy judges have served annual (ad hoc) terms rather than extended recall terms (which are generally 3-year appointments).¹² Further, the majority of the judges who were recalled served more than one term. As a result, the number of recalled judge appointments exceeded the number of retired judges who filled these appointments. The 111 recalled magistrate judge appointments were filled by 33 separate retired magistrate judges. The 159 recalled bankruptcy judge appointments were filled by 43 separate retired bankruptcy judges.

Analysis of the data by fiscal year shows that a majority of recalled judges served more than one annual appointment. For example, of the 18 retired magistrate judges who were serving recall duty on September 30, 1997, 17 were serving on an ad hoc basis, and 13 of the 18 recalled judges had also served in the previous year. Of the 22 retired bankruptcy judges who were serving recall duty on the same date, 17 were serving on an ad hoc basis, and 20 of the 22 recalled judges had also served in the previous year. (For details by fiscal year, see app. IV, tables IV.3 and IV.4.)

Reasons for Using Recalled Judges Varied

District and bankruptcy courts may request a recalled judge for a variety of reasons, such as temporarily high case filings, judgeship vacancies, or the illness of an active judge that temporarily reduces his or her ability to carry a full caseload. AOUSC officials and circuit executives noted that temporarily high case filings and judgeship vacancies were the two most common reasons for requesting recalled judges. Our analysis of AOUSC's data showed that some courts had judgeship vacancies and/or weighted case filings above the national average at the same time that they had a recalled judge. However, we found no clear pattern with regard to judgeship vacancies or weighted case filings among those courts that used recalled judges.

Comments of Circuit Executives on Recalled Judge Appointments

We spoke with the circuit executives or their representatives in the 12 regional judicial circuits concerning the use of recalled magistrate and bankruptcy judges.¹³ Overall, these officials told us that the circuits neither encourage nor discourage the use of recalled judges. Rather, the circuit councils generally review each request for a recalled judge on a case-by-case basis in light of the Judicial Conference's guidelines and regulations on the use of recalled judges and any circuit standards. Generally the

¹² To be eligible for an extended recall appointment, a magistrate or bankruptcy judge must be at least age 65 and have retired under JRS including "hybrid" JRS. See app. II.

¹³ There is also a court of appeals for the "federal circuit," but this circuit has no district or bankruptcy courts.

circuits have no written criteria, in addition to those of the Judicial Conference, for reviewing recalled judge requests. Two circuits had drafted general guidelines for recalled appointments, and the First Circuit required the requesting district to fill out an information sheet justifying its recall request.

Documentation the circuit executives provided showed that since 1990 appointments were made for all approved requests for recalled judges, with one exception. An appointment was not made for one approved recalled bankruptcy judge request. The bankruptcy court whose recall appointment was not made had requested the appointment of two recalled judges in 1993. The circuit council approved the court's request for both appointments, but only one recalled judge was actually appointed. Data were not available on why this second approved position was not filled. One possible reason is that Congress had authorized two additional bankruptcy judgeships for this court in 1992.

The circuit executives stated that few recalled judges are recalled for terms of less than 1 year and that some circuits have a general policy that appointments must be for at least 1 year. However, the officials noted that in most cases the circuits first consider the use of active judges from within and then outside the circuit (that is, intracircuit and intercircuit assignments) before requesting the assistance of recalled judges. The executives also said that when assistance from active judges is not available, recalled judges offer experienced assistance.

No Clear Pattern Between Judgeship Vacancies and the Use of Recalled Judges

Based on data provided by AOUSC, we found no clear pattern in judgeship vacancies among the district and bankruptcy courts that used recalled judges (see table 3). For example, of the 25 districts that recalled at least 1 magistrate judge during the period covered in our review, 10 recalled a magistrate judge during the same period that they experienced judgeship vacancies. Further, of the 25 districts that recalled at least 1 magistrate judge during the period of our review, 8 experienced judgeship vacancies but did not recall a magistrate judge during the time the vacancies existed. Four district courts appointed recalled magistrate judges when the court had both a judgeship vacancy and weighted case filings above the national average.

Table 3: Number of District and Bankruptcy Courts That Had Recalled Judges, and the Number of Judgeship Vacancies in These Courts, as of September 30, 1990-1997, and April 30, 1998

Date	Magistrate Judges		Bankruptcy Judges	
	Number of districts that recalled judges	Number of districts with judgeship vacancies	Number of courts that recalled judges	Number of courts with judgeship vacancies
09-30-90	4	0	10	2
09-30-91	6	0	10	4
09-30-92	7	0	11	6
09-30-93	9	2	10	8
09-30-94	11	2	21	11
09-30-95	12	1	22	8
09-30-96	15	2	21	11
09-30-97	16	2	22	11
04-30-98	14	1	25	10

Source: GAO analysis of AOUSC data.

The data were similar for bankruptcy judges. For example, of the 33 districts that recalled at least 1 bankruptcy judge during the period covered in our review, only 15 recalled a bankruptcy judge during the same period they experienced the judgeship vacancies. Further, of the 33 districts that recalled at least 1 bankruptcy judge during the period of our review, 22 experienced judgeship vacancies but did not recall a bankruptcy judge during the time the vacancies existed.¹⁴ Thirteen bankruptcy courts had bankruptcy judgeship vacancies at the same time the courts had one or more recalled judges. Six of these courts had both a bankruptcy judgeship vacancy and weighted case filings above the national average in at least one fiscal year in which the court recalled a bankruptcy judge.

Weighted Case Filings of Courts that Recalled Bankruptcy Judges Varied Widely

Based on our analysis of AOUSC's data on recalled bankruptcy judges and bankruptcy courts' weighted case filings,¹⁵ we found no clear pattern of weighted case filings among those bankruptcy courts that recalled judges during the period of our review. While some bankruptcy courts with comparatively high weighted case filings recalled judges, other bankruptcy courts with similarly high weighted case filings did not. Alternatively, a number of bankruptcy courts with comparatively low weighted case filings used recalled bankruptcy judges on a consistent basis. Although we have provided the district court weighted case filings in this report for informational purposes, it is not clear, for the reasons discussed below,

¹⁴ These categories are not mutually exclusive. Four districts recalled a bankruptcy judge in one year when the district had a judgeship vacancy but did not in another year that it had a judgeship vacancy.

¹⁵ Weighted case filings were not available for fiscal years 1990, 1991, and 1993 for bankruptcy courts. Although weighted case filings for these years were available for statistical years ending June 30 and calendar years ending December 31, we did not use these data because they would not be comparable to the fiscal year data provided for other years.

what, if any, relationship exists between these weighted case filings and magistrate judge workload.

The Judicial Conference has adopted weighted case filings measures for both district and bankruptcy courts. Weighted case filings represent a measure of the relative amount of judge time that a district or bankruptcy court's case filings may require. It is useful to remember that the case weights for both district and bankruptcy courts represent averages, and the actual amount of judge time required for any specific mix of cases may vary from court to court. In assessing district judge or bankruptcy judge workload, the Judicial Conference uses weighted case filings per authorized judgeship. Authorized judgeships are the number of district or bankruptcy judgeships authorized by statute. To determine a bankruptcy or district court's weighted case filings per authorized judgeship, the court's total weighted filings are divided by its number of authorized judgeships. For example, a district with 4,000 weighted filings and 10 authorized judgeships would have 400 weighted filings per authorized judgeship.

Bankruptcy courts' weighted case filings varied widely

Bankruptcy court weighted case filings were developed to measure the workload of bankruptcy judges. The average weighted case filings for those bankruptcy courts that recalled bankruptcy judges varied among the districts each year and across the years covered by our review. For example, the weighted case filings of courts that recalled bankruptcy judges ranged from 619 to 2,144 per bankruptcy court judgeship in fiscal year 1992 and from 639 to 2,321 in fiscal year 1997 (see table 4). The average among all 90 bankruptcy courts was 1,437 in 1992 and 1,436 in 1997. (See app. V, table V.2, for details on weighted case filings, by bankruptcy district, for each fiscal year.)

Table 4: Range of Weighted Case Filings for Those Bankruptcy Courts That Recalled Judges Compared to National Average, Fiscal Years 1992 and 1994-1997

Fiscal year ^a	Number of districts recalling judges	Range of weighted case filings		
		Low district	High district	National average
1992	11	619	2,144	1,437
1994	21	507	2,084	1,227
1995	22	536	1,843	1,149
1996	21	544	1,729	1,272
1997	22	639	2,321	1,436

^aWeighted case filings not available for fiscal years 1990, 1991, and 1993.

Source: GAO analysis of AOUSC data.

District court weighted case filings not designed to measure magistrate judge workload

The district court case weights measure the workload of district court judges, not magistrate judges. The Conference has not adopted a weighted workload measure for magistrate judges. To the extent that the work of magistrate judges reduced the time that district judges must spend on specific types of cases, the reduction in district judge time would be reflected in the district court case weights for those types of cases. Some types of cases, such as criminal misdemeanors, which are commonly decided by magistrate judges, are not reflected in the district court case weights at all.

The average weighted case filings for those districts that recalled magistrate judges varied among the districts each year and across the years covered by our review. For information purposes, the high and low ranges, plus the national average weighted case filings are shown in table 5. (See app. V, table V.1, for details on weighted case filings, by district, for each fiscal year. However, it is not clear what use these data may have in assessing magistrate judge workload.

Table 5: Range of Weighted Case Filings for Those Districts That Recalled Magistrate Judges Compared to National Average, Fiscal Years 1990-1997

Fiscal year	Number of districts recalling judges	Range of weighted case filings		
		Low district	High district	National average
1990	4	412	695	427
1991	6	338	507	386
1992	7	356	506	412
1993	9	382	522	419
1994	11	377	560	419
1995	12	264	585	448
1996	15	298	651	472
1997	16	259	1,649	519

Source: GAO analysis of AOUSC data.

A Number of Variables Affect Actual Cost Savings Associated with Recalled Judges

Although the cost of using a recalled judge is less than the cost of a full-time active magistrate or bankruptcy judge, the actual cost of any particular recall appointment depends upon a number of variables. These include (1) whether the recalled judge retired at full or partial salary, (2) the pension plan under which the judge retired, (3) the staff support provided to the judge, and (4) whether the judge is required to travel from his or her home to the court in which the recall service is performed.

Judges who retired at full salary are not entitled to additional pay for recall service. Judges who retired at less than full salary are entitled to a salary (or daily wage for those performing part-time service) that equals the difference between their pensions and the salary of an active, full-time judge. (See app. II for more details.) Judges who retired under the Civil Service Retirement System (CSRS) or the Federal Employee Retirement

System (FERS) may be entitled to a supplemental annuity while on recall duty. Recalled judges who have limited support staff, such as a secretary only, cost less than those recalled judges receiving the same pension who have the same support staff as a full-time active judge. Recalled judges are entitled to the same travel and per diem expenses as active judges. Thus, if a judge must travel from his or her home to the district to which he or she was recalled, the district that recalled the judge may incur travel and per diem expenses for his or her services.

**Recalled Magistrate Judges
Generally Retired at Less
Than Full Salary;
Bankruptcy Judge Data
Mixed**

The majority of magistrate judges who were eligible for recall each year had retired at less than full salary.¹⁶ For every fiscal year from 1990 through 1996, the number of magistrate judges who had retired at less than full salary was at least double the number of judges who had retired at full salary (see app. IV, table IV.5). This was not true of bankruptcy judges. Beginning in fiscal year 1993, a majority of eligible, retired bankruptcy judges had retired at full salary; and, beginning in fiscal year 1994, a majority of recalled bankruptcy judges had retired at full salary (see app. IV, table IV.6).

Unlike their colleagues who retired at full salary, magistrate and bankruptcy judges whose pensions are less than the full salary of the office from which they retired have a financial incentive to serve on recall duty because they would be paid the difference between the amount of their pensions and the current salary of an active magistrate or bankruptcy judge. Consequently, it is generally less expensive for the circuit councils and district courts to recall magistrate or bankruptcy judges who had retired at full salary than to recall magistrate or bankruptcy judges who had retired at less than full salary. From fiscal years 1991 through 1997, the percentage of eligible magistrate judges who had retired on full salary and were recalled ranged from 23 percent (1993) to 44 percent (1996). During this same period, no more than 19 percent (in 1991) of eligible magistrate judges who retired at less than full salary were recalled (see app. IV, table IV.5). The picture for bankruptcy judges is mixed. From fiscal years 1991 through 1994, bankruptcy judges who retired at less than full salary were more likely to be recalled than those who had retired at full salary. Beginning in fiscal year 1995, judges who retired at full salary have been more likely to be recalled. (See app. IV, table IV.6) This may reflect the fact that, beginning in 1994, a majority of eligible retired bankruptcy judges had retired at full salary.

¹⁶ Only judges who have qualified for retirement under JRS may retire at full salary.

Magistrate and bankruptcy judges who retired under either CSRS or FERS may qualify for an enhanced retirement pension as a result of recall service. Such retired judges with at least 1 but less than 5 years of full-time continuous recall service may receive a supplemental annuity. Judges with 5 or more years of continuous full-time recall service may have their pensions recalculated based on a new “average salary.” Of the 33 separate magistrate judges who were recalled during the period of our review, 9 (27 percent) had retired under CSRS or FERS, and 1 had served 5 or more years of recall service. Of the 43 separate bankruptcy judges who were recalled, 12 (28 percent) retired under CSRS or FERS and 8 had served 5 or more years of recall service.

**Range of the Estimated
Annual Recurring Costs of
Recalled Magistrate and
Bankruptcy Judges**

AOUSC maintains and annually updates data on the first-year and annual recurring costs of various types of judgeships, including full-time magistrate and bankruptcy judgeships. AOUSC also maintains and annually updates the average annual estimated costs of recalled magistrate and bankruptcy judges. AOUSC’s cost data includes the salaries and benefits of the judges and any support staff, plus the cost of space, equipment, and facilities to support the judge.

The AOUSC cost estimates for fiscal year 1999 show that the recurring annual costs of a full-time magistrate judge is \$601,832 and the cost of a full-time bankruptcy judge is \$575,297. AOUSC estimated that it would cost \$253,477 annually to recall a retired magistrate judge to full-time service, with an annual salary of \$30,728 per year, and provide the recalled judge with a full support staff—law clerk, secretary, courtroom deputy, and electronic court recorder. Comparable estimated costs for a recalled bankruptcy judge were \$241,402.

However, according to AOUSC, only some recalled judges have a full personal staff. Many only have a secretary or law clerk. Using AOUSC’s fiscal year 1999 data, we estimated it would cost about \$87,000 annually to recall to full-time service a magistrate judge who retired at full salary and provide him or her with a secretary, but no other personal staff, while on recall service. This total includes the estimated cost of the secretary’s fringe benefits. The comparable estimated cost for a recalled bankruptcy judge is about \$93,000.

The actual cost of a recalled judge would depend upon the amount of the salary earned on recall service, the personal staff provided to support the recalled judge, and any travel costs that may be incurred while on recall service.

Agency Comments and Our Evaluation

On December 16, 1998, AOUSC provided written comments on a draft of this report. AOUSC noted that although our report included no findings or conclusions, an uninformed audience might read into the report an implication that the judiciary had not tapped a resource available to it when in fact there are inherent limitations on the use of recalled judges. AOUSC noted that “[t]here are good reasons why recalled judges are not a greater or more predictable resource than they already are, not the least of which is the fact that they must be at least 65 years of age to retire under the Judicial Retirement System.”

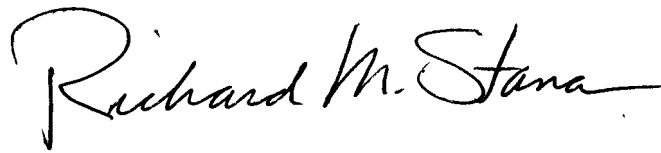
Our report is intended to provide information and analysis, not explicit or implied conclusions or recommendations. Our report shows that a majority of retired, eligible bankruptcy judges as of April 30, 1998, had retired under JRS. However, as of the same date a majority of retired, eligible magistrate judges had retired under CSRS or FERS, and such judges did not have to be 65 years of age to retire. We did not obtain information on the age of the judges who were eligible for recall. AOUSC also provided technical changes to the report that we incorporated as appropriate.

We are sending copies of this report to the Chairmen and Ranking Minority Members of the House and Senate Committees on the Judiciary; the Chairman and Ranking Minority Member of the Subcommittee on Administrative Oversight and the Courts, Senate Committee on the Judiciary; the Chairmen and Ranking Minority Members of the Subcommittee on Commercial and Administrative Law and Subcommittee on Courts and Intellectual Property, House Committee on the Judiciary; the Chairmen and Ranking Minority Members of the Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, House and Senate Committees on Appropriations; Director, AOUSC; and the Chief

Judge of each of the 12 federal regional circuit courts of appeals. We will provide copies to other interested parties upon request.

Major contributors to this report are listed in appendix VII. If you have any questions about this report, please call me on (202) 512-8777.

Sincerely yours,

A handwritten signature in black ink that reads "Richard M. Stana". The signature is written in a cursive style with a large, stylized "R" and "S".

Richard M. Stana
Associate Director
Administration of Justice Issues

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Abbreviations

AOUSC	Administrative Office of the United States Courts
CSRS	Civil Service Retirement System
FERS	Federal Employees Retirement System
JRS	Judicial Retirement System
OPM	Office of Personnel Management
TSP	Thrift Savings Plan

The Process For Recalling Retired Magistrate and Bankruptcy Judges

The process of identifying the need for the services of recalled magistrate and bankruptcy judges is shared by the district or bankruptcy court, the circuit judicial council of the circuit in which the district or bankruptcy court is located, and, in some instances, the Judicial Conference Committee on the Administration of the Magistrate Judges System or the Judicial Conference Committee on the Administration of the Bankruptcy System. Briefly, the formal process includes three basic steps: (1) the district or bankruptcy court initiates the request for a recalled judge, (2) the circuit judicial council reviews and approves or denies the request, and (3) when there is a request for an “intercircuit” recall (the recall of a judge outside of the circuit where the judge served on active status), the Magistrate Judges Committee or the Bankruptcy Committee of the Judicial Conference must approve the appointment. The Administrative Office of the U.S. Courts (AOUSC) provides informal support by assisting courts in locating retired magistrate and bankruptcy judges who are able and willing to serve on a recalled basis.

Retired magistrate and bankruptcy judges may be recalled only with their consent and may be recalled for full- or part-time appointments.¹ The decision to seek the appointment of a recalled judge rests with the district or bankruptcy court that determines it needs the services of a recalled judge. The chief judge of the district or bankruptcy court requests a recalled judge, specifying whether the requested recall would be full or part time, the period of time for which the appointment is requested, and whether staff and other expenditures are required. The circuit judicial council reviews the district court or bankruptcy court’s request and may approve, modify, or deny the request. If the circuit judicial council approves the request, the council is to specify whether the recalled judge will serve on a full- or part-time basis. Whether full or part time, the recall may be for up to 1 year and a day (ad hoc recall) or, in the case of magistrate judges, more than 1 year but not in excess of 3 years (extended service recall). Extended service recalls of retired bankruptcy judges are for a fixed 3-year period. Recall terms are renewable at the request of the district or bankruptcy court and upon approval of the circuit judicial council. Magistrate and bankruptcy judges who retired under the Civil Service Retirement System (CSRS) or the Federal Employee Retirement System (FERS) are not eligible for extended recall.

AOUSC’s role in the recall of retired magistrate and bankruptcy judges is principally one of assistance to local courts by helping them locate retired

¹ Retired magistrate and bankruptcy judges who have retired under JRS and elect to practice law after retirement are not eligible to be recalled.

magistrate or bankruptcy judges who are willing to serve on a recalled basis. AOUSC assists in locating an eligible judge willing to serve who is as close as possible, geographically, to the district or bankruptcy court in which the recalled judge would serve. It is important to note that an eligible judge may be generally willing to serve on recalled status but may be unwilling to accept a specific recalled judge assignment. For example, a judge who retired from a district in the midwest and subsequently moved to Florida for retirement may be willing to be recalled only in Florida or an adjacent state.

Prior to September 1996, the court or circuit council seeking a recalled judge had to check with AOUSC regarding the availability of funds for the recalled judge and any support staff that he or she may be provided. However, in September 1996, the Judicial Conference amended the recall regulations eliminating the requirement of funding approval by AOUSC prior to judicial council authorization of a recalled judge and any support staff. It is now the circuit council's responsibility to determine the need for a recalled magistrate or bankruptcy judge and also the support staff, if any, who will be available to the recalled judge. The circuit council may decide to provide the recalled judge no separate support staff (but rely on staff already in the court), or provide the judge with his or her own secretary, law clerk, or both.

Process for Recalling Magistrate Judges

Once the local district court determines the need to request a recalled magistrate judge, it may call the Magistrate Judges Division of the Office of Judges Programs in AOUSC to notify it of the need for a full- or part-time recalled judge, including any specific requirements for the position. For example, the recall duties may be limited to criminal pretrial proceedings 2 or 3 days a week or month, or the court may need a full-time recalled magistrate judge to handle a full range of duties. In limited circumstances, the district court may seek a full-time recalled magistrate judge in lieu of filling a magistrate judge vacancy. In these circumstances, the requesting district court has the discretion of whether to request that a vacancy be filled with a new judge or to request the appointment of a recalled judge instead—at least for a period of time.

Using its list of eligible retired magistrate judges, the Magistrate Judges Division would generally call those eligible judges residing in or near the requesting district, moving out to other areas as needed. The goal is to identify an eligible judge who is willing to serve in the position and who is geographically as close as possible to the requesting district. This is not always possible, however. For example, the district of New Jersey requested a recalled magistrate judge to assist the district for several days

a week. AOUSC's search extended outward from New Jersey to Iowa, where it found a judge willing to serve that court. This recall appointment required the approval of the Magistrate Judges Committee because it involved an intercircuit assignment. The recalled judge had retired from the eighth circuit (which includes Iowa) and was recalled to a position in the third circuit (which includes New Jersey).

The Magistrate Judges Division's eligibility list consists of all retired magistrate judges who have not declared themselves ineligible. To assess the level of interest in being recalled and obtain a more accurate eligibility list, in February 1997, the Magistrate Judges Division began distributing questionnaires to all retiring magistrate judges. The Division has not formally surveyed retired magistrate judges who retired prior to February 1997.

The actual process of obtaining a recalled magistrate judge varies, as follows:

- The requesting district court may provide to AOUSC the names of retired magistrates judges whom the district believes are eligible and willing to serve on recall duty and either directly ask these retired judges if they are willing to serve or ask AOUSC to call these retired judges to determine if they are willing to serve.
- The requesting court may ask AOUSC to contact someone from AOUSC's eligibility list for recall duty.
- By prior arrangement, and with the approval of the circuit council, a magistrate judge may transition directly from active to recall status, (i.e., retire on Friday and return as a recalled judge on the following Monday).

According to AOUSC, when a court asks for one or more additional magistrate judge positions, AOUSC does a formal survey to review the district's workload and its use of magistrate judges. AOUSC's policy for conducting this survey is that the survey team is to assess the possible use of recalled judges in lieu of an additional position. For those districts that do not request additional magistrate judge positions, the Judicial Conference mandates a review every 4 to 5 years of the use of magistrate judges and whether the use of recalled judges is a reasonable option. The results are to be reported to the Magistrate Judges Committee, which reviews all positions and recommends to the Judicial Conference whether the new positions should be authorized and whether existing positions should be continued.

Process for Recalling Bankruptcy Judges

The process for recalling bankruptcy judges is generally similar to that used for recalling magistrate judges. One difference is that it is the responsibility of the requesting bankruptcy court to formally advise the Bankruptcy Judges Division of the Office of Judges Programs in AOUSC that the court is requesting the services of a recall judge. The circuit council would be more likely than AOUSC to know which retired bankruptcy judges may be available and willing to be recalled within the circuit (especially for intracircuit service). Thus, it is not unusual for the names of retired bankruptcy judges available for service to accompany the formal notice to AOUSC.

The Bankruptcy Judges Division's eligibility list contains all retired judges who have not declared themselves ineligible. Ineligible retired bankruptcy judges include those who have notified AOUSC that they plan to practice law in retirement. To obtain a more accurate eligibility list and assess retiring judges' interest in being recalled, in April 1998, the Division began to request information from all retiring bankruptcy judges that included a judge's interest in serving in a recall position. AOUSC has not gathered similar information on a systematic basis from bankruptcy judges who retired prior to April 1998.

When a judgeship vacancy occurs in a bankruptcy court, the Bankruptcy Judges Division, upon request, is to make available to that court a list of retired bankruptcy judges available for recall in the circuit and to encourage the court to use recalled judges. If a court requests help in obtaining a recall candidate, the Division is to call judges on its eligibility list, using the same criteria as the Magistrate Judges Division (geographic proximity) to find a candidate.

The Judicial Conference requires the Bankruptcy Judges Division to conduct surveys in even numbered years to assess the continued need for existing authorized bankruptcy judgeship positions. The principal criteria for assessing continued judgeship needs is the weighted case filings per judgeship in the district. The biennial bankruptcy judgeship assessment process to determine the need for additional judgeships includes surveys and on-site reviews in which a team (with a bankruptcy judge of a different district as a member) visits the bankruptcy court that has requested an additional judgeship(s).² One goal of the team is to alert the bankruptcy court to the option of using recall judges in lieu of requesting additional

² For a more detailed explanation of the Judicial Conference's process for assessing bankruptcy judgeship needs, see Federal Judiciary: Bankruptcy Judgeship Requests, 1993-1997 (GAO/T-GGD-97-183, Sept. 22, 1997).

Appendix I
The Process For Recalling Retired Magistrate and Bankruptcy Judges

judgeship positions. As part of its site visit, the team is to discuss the recall option, its benefits, and identify the retired judges available for recall.

Recall Eligibility, Compensation, and Available Staff Support for Recalled Magistrate and Bankruptcy Judges

Eligibility for recall service, the compensation paid to recalled judges, and the staff support available to recalled judges are governed by statute and Judicial Conference policy and regulations.

Eligibility

Generally, magistrate judges and bankruptcy judges who have retired from the bench are eligible for recall service. A retired bankruptcy or magistrate judge may be recalled to service in accordance with regulations promulgated by the Judicial Conference under 28 U.S.C. §§ 155 (b) and 636 (h), respectively. Under the Conference's regulations, a retired magistrate or bankruptcy judge may be recalled to "ad hoc" recall service for renewable periods of 1 year and 1 day, or for "extended recall" service for renewable 3-year periods. There is no limit to the number of renewals that may be approved. Any judge who is receiving an annuity is eligible for "ad hoc" recall service. Judges may qualify for an annuity under several retirement systems—CSRS; FERS; the Judicial Retirement System (JRS), available only to full-time judges;¹ or a "hybrid" version of JRS in which a judge receives a pension paid from both JRS and CSRS or FERS.² However, only magistrate and bankruptcy judges who have retired on full salary under "straight" or "hybrid" JRS and are at least 65 years of age are eligible for "extended recall."

A circuit judicial council may recall a retired magistrate or bankruptcy judge with the judge's consent, but recall is subject to the availability of funds to pay any associated expenses, such as per diem and travel expenses. A retired judge may serve in any district upon recall. The court to which the judge is recalled determines the location and duration of the recalled judge's service and may impose limitations on the scope of service provided on recall. The term of recall may be for full- or part-time service and may be modified or terminated at any time by the judicial council of the circuit in which the judge is recalled.

A judge who retires under JRS and who practices law after retirement is not eligible for recall service. Nor are such retired judges eligible for any annual cost-of-living adjustments in their JRS annuity subsequent to notifying AOUSC of their intent to practice law. Moreover, a judge who retires under JRS and fails to notify AOUSC prior to engaging in the practice of law forfeits his or her annuity. However, magistrate judges who did not retire under JRS and who practiced law after retirement may be recalled to part-time service and may continue to practice law while in

¹All full-time magistrate and bankruptcy judges are eligible to elect coverage under JRS at any time prior to 30 days before leaving office.

²The "hybrid" JRS annuity is available only to judges in office on November 15, 1988.

recall service. Magistrate judges may not practice law while serving full-time recall service.

Compensation

Retired magistrate and bankruptcy judges who are recalled to full-time judicial duties may receive pay equal to the difference between the amount of their pensions and the salary of a full-time magistrate or bankruptcy judge. Retired judges who are recalled to part-time service are paid a daily wage. For each day of service, the judge would receive the daily salary of the office for that day less the portion of the judge's annuity allocable to that day.

A retired judge who is recalled to full-time service is entitled to the salary of the office to which he or she is recalled less the annuity allocable to the period of recall service. For example, a bankruptcy judge who retired with an annuity equal to 100 percent of the salary of the office to which he or she was recalled would receive no additional compensation. However, a bankruptcy judge who retired on an \$80,000 annuity who is recalled to full-time service would receive "wages" of \$45,764—the difference between the \$80,000 annuity and the \$125,764 salary of a full-time bankruptcy judge.

A retired judge may also be recalled on a less than full-time basis, referred to as "when actually employed." In such cases, the recalled judge's salary is computed on a daily basis. For each day of service, the judge would receive the daily salary of the office for that day less the portion of the judge's annuity allocable to that day. For example, if the annual salary of the office were \$123,000, the daily salary rate would be about \$473 (\$123,000 divided by 260 days—the number of days in a standard work year). If the recalled judge were receiving an annuity of \$80,000, the daily proportion of the annuity would be about \$222 (\$80,000/360 days—the number of days using 12, 30-day calendar months). Thus, the judge would receive about \$251 per day for each day of recall service (\$473 - \$222).

Effect of Recall Service on A Judge's Pension

Recall service may not be credited and used to increase the amount of a judge's retirement annuity under JRS. However, a recalled judge who is receiving a retirement annuity under CSRS or FERS may earn an increased annuity as a result of recall service.

For continuous recall service equal to at least 1 year but less than 5 years of full-time service, the judge is entitled to a supplemental annuity equal to 2.5 percent (CSRS) or 1 percent (FERS) of the judge's basic pay averaged during the recall period. For recall service of 5 or more years of continuous full-time service, the judge may elect this supplemental annuity or have the total CSRS or FERS annuity recalculated based on a new

“average salary.” For example, a retired judge who is paid a CSRS annuity of \$50,000 based on 20 years service and a high-3 average salary of \$100,000 (20 years x 2.5 percent x \$100,000) and who is recalled full time to a position paying \$123,000 annually, would be entitled to a recomputed annuity of \$76,875 after 5 years of recall service (25 years x 2.5 percent x \$123,000). However, a recalled judge must contribute to CSRS or FERS in order to receive a supplemental or recomputed annuity. Judges who have retired under CSRS may contribute up to 5 percent of their wages to the Thrift Savings Plan (TSP) during their term of recall service. Judges who retired under FERS, or those who retired under CSRS, but elect FERS during their period of recall service, may, within certain limitations, contribute up to 10 percent of their wages and receive government contributions. According to AOUSC, judges who retired under JRS are not eligible to contribute to TSP while on recall.

Support Services

A recalled judge is entitled to the services of a secretary and a law clerk (1) on a showing of need, (2) with the approval of the judicial council, and (3) subject to the availability of appropriated funds. A recalled judge is also entitled to travel and per diem expenses in the same manner as an active judge.

Objectives, Scope, and Methodology

Our objectives were to determine for the period October 1, 1989, through April 30, 1998, (1) whether the demand for recalled magistrate and bankruptcy judges has exceeded the number of judges available to serve in recalled positions, (2) whether the courts that recalled magistrate and bankruptcy judges had judgeship vacancies or higher than average weighted case filings, and (3) the approximate 1-year cost savings associated with using a recalled judge rather than filling a full-time magistrate or bankruptcy judgeship position.

To meet these objectives, we requested and AOUSC provided data as of September 30 for each fiscal year from 1990 through 1997, and as of April 30 for fiscal year 1998 on (1) the number of retired judges eligible for recalled service, (2) the number of recalled positions filled by magistrate and bankruptcy judges who had retired on full or partial salary, (3) the number of retired magistrate and bankruptcy judges who filled these positions, and (4) the judgeship vacancies and weighted case filings of those courts that used recalled judges. Specifically, AOUSC provided data as of September 30, 1990 to 1997 and as of April 30, 1998 on the

- number of judges in retirement status;
- number of judges who had retired each year under JRS, CSRS, or FERS;
- number of judges who retired each year with a pension equal to full salary;
- number of judges who retired each year with a pension that was less than full salary;
- number of judges who were eligible for recall each year;
- number of judges in recall status at the end of each fiscal year;
- number and duration of magistrate and bankruptcy judgeship appointments each year and the dates of those appointments;
- weighted case filings per authorized district judgeship in district courts for each fiscal year 1990 through 1997;

-
- weighted case filings per authorized bankruptcy judgeship in bankruptcy courts for fiscal years 1992 and 1994 through 1997 (fiscal year data for 1990, 1991, and 1993 were not available);¹
 - number of vacancies each year in those courts that recalled magistrate or bankruptcy judges, including the dates those vacancies occurred and were filled; and,
 - the estimated fiscal year 1999 costs of creating and maintaining a new full-time magistrate or bankruptcy judgeship, including salaries, benefits, support staff, and space and facilities.

AOUSC's data on the number of judges in retirement status each year and the number of judges who were eligible for recall each year were cumulative. Thus, for example, the fiscal year 1997 data on retired magistrate judges included all judges in retirement status as of September 30, 1997, whether the judges had retired in fiscal year 1997 or a previous year. All other data AOUSC provided were not cumulative. For example, the data on the number of judges who retired in fiscal year 1997 under JRS included only the judges who retired that year, not those judges who had retired under JRS in previous years.

To determine the net number of retired magistrate and bankruptcy judges at the end of each fiscal year, we obtained data from AOUSC and the Office of Personnel Management (OPM) on the dates of death of retired judges who died during the period October 1, 1989, through April 30, 1998. AOUSC officials said that AOUSC does not maintain post-retirement data on magistrate and bankruptcy judges who retired under one of the two principal civil service retirement systems—CSRS or FERS. For judges who retired under one of these retirement systems, OPM provided data on the dates of death.

Limitations of Data on Recall Appointments

The data AOUSC provided on recall appointments included judges whose recall appointments were in effect as of September 30 of each fiscal year from 1990 through 1997 and as of April 30, 1998, for fiscal year 1998. Consequently, for fiscal years 1990 through 1997, the data AOUSC

¹ Weighted case filings were not available for fiscal years 1990, 1991, and 1993 for bankruptcy courts. Although weighted case filings for these years were available for statistical years ending June 30 and calendar years ending December 31, we did not use these data because they would not be comparable to the fiscal year data provided for other years.

provided did not include appointments made on or after October 1 of each fiscal year that expired prior to September 30 of each fiscal year. Nor did it include any appointments made on or after October 1, 1997, that expired prior to April 30, 1998. AOUSC officials said that they believed the number of appointments that were not included in our data were relatively few, and our interviews with the 12 Circuit Executives also indicated that during the period of our review there were few recall appointments of less than 1 year.

Data Analysis

From the data provided by AOUSC and OPM, we determined (1) the percentage of retired judges whom AOUSC data indicated were eligible for recall each year; (2) the number who were actually on recall duty at the end of each fiscal year during 1990 through 1997 and as of April 30, 1998; (3) the districts to which they were recalled; (4) the number who were reappointed to their recall positions each year; (5) the number of recalled judges who did and did not retire on full salary; (6) the weighted case filings of the districts who used recalled judges each fiscal year (for those years where data were available); (7) whether the districts who recalled judges had one or more judgeship vacancies during the period of recall service; and (8) the approximate cost savings of using a recalled judge rather than filling a vacant full-time magistrate or bankruptcy judgeship position.

We reviewed the data provided by AOUSC for internal consistency by choosing a judgmental sample of AOUSC's data on retired and recalled judges, tracing the data back to source documents, and verifying that the data AOUSC provided matched the data on the source documents. Our sample included retired and recalled magistrate and bankruptcy judges from several different years and geographically diverse districts.

The Circuit Councils review and must approve requests for recalled judges. We interviewed the Circuit Executive in each of the 12 regional circuits regarding (1) the reasons why some district and bankruptcy courts requested recalled judges and others within the circuit did not; (2) what incentives and disincentives there may be for district and bankruptcy courts to use recalled judges and for retired judges to serve on recall duty; and (3) information on alternatives to recalled judges, such as the use of visiting judges on intracircuit or intercircuit assignments. We summarized the results of these interviews to identify common practices and differences among the circuits.

We obtained information on the policies for determining retired judges' eligibility for service and for recalling retired magistrate or bankruptcy

judges from the AOUSC publication, Retirement Benefits for Bankruptcy Judges and Magistrate Judges (1995 edition), and the semiannual minutes of the Judicial Conference and its Committees on (1) the Administration of the Magistrate Judges System and (2) the Administration of the Bankruptcy System for calendar years 1990 through 1997.

We used AOUSC data on the salary and benefits of full-time magistrate and bankruptcy judges, the salary and benefits of their support staff (law clerk, secretary, courtroom deputy, electronic court recorder), and the cost of space and equipment for new magistrate and bankruptcy judges, to estimate the comparative costs of using a recalled judge instead of adding a new judge. For recalled judges without a full support staff, we assumed the recalled judges had a full-time secretary, but no other staff, during the period of recall service. For the cost of the recalled judges' salary, we used AOUSC's average estimated salary for recalled judges.

Data on Recalled Magistrate and Bankruptcy Judges, by District and Fiscal Year

This appendix contains data on the number of recalled magistrate and bankruptcy judge positions filled by districts as of September 30, 1990, through 1997 and as of April 30, 1998, (tables IV.1 and IV.2). Tables IV.3 and IV.4 show the number of retired magistrate and bankruptcy judges who were recalled for ad hoc recall and extended recalled service each year. Tables IV.5 and IV.6 contain data on the pension status of the judges eligible for recall and those eligible judges who were recalled each year during the period of our review.

Table IV.1: Listing of the Number of Recalled Magistrate Judge Appointments, by District and by Fiscal Year, as of September 30, 1990-1997, and as of April 30, 1998, in Circuit Order

Circuit/ District	1990	1991	1992	1993	1994	1995	1996	1997	1998	Total
D.C.										
D.C.								1	1	2
First										
RI						1	1	1	1	4
Second										
NY-N							1	1	1	3
NY-W			1	1	1	1	1	1	1	7
Third										
PA-E					1	2	2	2	2	9
NJ								1		1
Fourth										
SC							1	1	1	3
Fifth										
MS-N							1			1
TX-S	1	1	1	1						4
Sixth										
MI-E				1	1	1	1	2	2	8
OH-N								1		1
OH-S							2			2
Seventh										
IL-C								1	1	2
Eighth										
MN			1	1	1	2	2	1	1	9
MO-E	1	1	1	1	1	1				6
NE	1	1								2
Ninth										
CA-C					1					1
CA-E		1	1	1	1	1	1	1		7
CA-N	1	1	1	1	2	2	2	1	1	12
CA-S					1					1
OR				1	2	2	2	1	1	9
WA-E						1	1			2
Tenth										
NM						1	1	1	1	4
Eleventh										
FL-S		1	1	1	1	1	1	1	1	8
GA-N									3	3

Appendix IV

Data on Recalled Magistrate and Bankruptcy Judges, by District and Fiscal Year

Circuit/ District	1990	1991	1992	1993	1994	1995	1996	1997	1998	Total
Total	4	6	7	9	13	16	20	18	18	111

Source: GAO analysis of AOUSC data.

Table IV.2: Listing of the Number of Recalled Bankruptcy Judge Appointments, by District and Fiscal Year, as of September 30, 1990-1997, and as of April 30, 1998, in Circuit Order

Circuit/ District	1990	1991	1992	1993	1994	1995	1996	1997	1998	Total
Second										
CT									1	1
NY-E				1	1	1	1	1	1	6
NY-S						1	1	1	1	4
VT	1	1	1	1	1	1	1	1	1	9
Third										
PA-W					1	1	1	1	1	5
Fourth										
NC-M					1	1	1	1	1	5
NC-W					1	1	1	1	1	5
VA-E					1	1	1	1	1	5
Fifth										
LA-E			1	1	1	1	1	1	1	7
TX-E							1	1		2
TX-S								1		1
Sixth										
KY-E	1	1	1						1	4
MI-E									1	1
MI-W	1	1	1							3
OH-N					2	3	2	1	1	9
OH-S					1	1	1	1	1	5
TN-E					1	1	1	1	1	5
Seventh										
IL-C	1	1	1	1	1	1	1	1	1	9
IL-N					1	1	1	1		4
IN-N	1	1	1	1	1	1	1	1	1	9
WI-E	1	1	1	1	1	1				6
Eighth										
MN					1	1	1	1	1	5
Ninth										
CA-C	1	1	2	2	1				1	8
CA-E						1			1	2
CA-N	1	1	1	1	1					5
HI			1	1	1	1	1	1	1	7
NV					1	1	1	1	1	5
OR	1	1	1	1	2	1	1		1	9
WA-E	1	1						1	1	4
WA-W					1	1	1	1		4
Tenth										
NM									1	1
OK-W							1	1	1	3
Eleventh										

Appendix IV

Data on Recalled Magistrate and Bankruptcy Judges, by District and Fiscal Year

Circuit/ District	1990	1991	1992	1993	1994	1995	1996	1997	1998	Total
AL-N						1				1
Total	10	10	12	11	23	24	22	22	25	159

Source: GAO analysis of AOUSC data.

Table IV.3: Number of Retired Magistrate Judges Eligible for Recall, Number of Eligible Judges Recalled by Type of Recall, and Number of Recalled Judges Who Served in Previous Years, as of September 30, 1990-1997, and as of April 30, 1998

Effective date	Number of judges eligible for recall	Number of judges recalled			Number of recalled judges who served in previous year ^a
		Ad hoc recall	Extended recall	Total	
09-30-90	19	4	0	4	N/A
09-30-91	30	6	0	6	4
09-30-92	44	7	0	7	5
09-30-93	49	9	0	9	7
09-30-94	60	12	1	13	8
09-30-95	73	15	1	16	11
09-30-96	83	19	1	20	14
09-30-97	92	17	1	18	13
04-30-98	96	17	1	18	15

Note: N/A = not applicable

^aJudges whose recall terms were renewed or judges who were serving on extended recall.

Source: GAO analysis of AOUSC data.

Appendix IV

Data on Recalled Magistrate and Bankruptcy Judges, by District and Fiscal Year

Table IV.4: Number of Retired Bankruptcy Judges Eligible for Recall, Number of Eligible Judges Recalled by Type of Recall, and Number of Recalled Judges Who Served in Previous Years, as of September 30, 1990-1997, and as of April 30, 1998

Effective date	Number of judges eligible for recall	Number of judges recalled			Number of recalled judges who served in previous year ^a
		Ad hoc recall	Extended recall	Total	
09-30-90	18	10	0	10	N/A
09-30-91	22	10	0	10	10
09-30-92	27	12	0	12	9
09-30-93	33	11	0	11	10
09-30-94	42	16	7	23	10
09-30-95	47	16	8	24	20
09-30-96	50	12	10	22	19
09-30-97	55	17	5	22	20
04-30-98	60	22	3	25	18

Note: N/A = not applicable

^aJudges whose recall terms were renewed or judges who were serving on extended recall.

Source: GAO analysis of AOUSC data.

Table IV.5: Number and Percentage of Retired Magistrate Judges Eligible for Recall and Who Were Recalled, by Pension Status, as of September 30, 1990-1997, and as of April 30, 1998

Effective date	Number of retired judges eligible for recall		Number of eligible retired judges who were recalled		Percentage of eligible retired judges who were recalled ^a	
	Retired at less than full salary	Retired at full salary	Retired at less than full salary	Retired at full salary	Retired at less than full salary	Retired at full salary
09-30-90	19	0	4	0	21	N/A
09-30-91	26	4	5	1	19	25
09-30-92	35	9	4	3	11	33
09-30-93	36	13	6	3	17	23
09-30-94	43	17	6	7	14	41
09-30-95	50	23	7	9	14	39
09-30-96	58	25	9	11	16	44
09-30-97	61	31	8	10	13	32
04-30-98	61	35	8	10	13	29

Note: N/A = not applicable

^aRounded to nearest whole number.

Source: GAO analysis of AOUSC data.

Appendix IV

Data on Recalled Magistrate and Bankruptcy Judges, by District and Fiscal Year

Table IV.6: Number and Percentage of Retired Bankruptcy Judges Eligible for Recall and Who Were Recalled, by Pension Status, as of September 30, 1990-1997, and as of April 30, 1998

Effective date	Number of retired judges eligible for recall		Number of retired judges who were recalled		Percentage of retired judges eligible for recall who were recalled ^a	
	Retired at less than full salary	Retired at full salary	Retired at less than full salary	Retired at full salary	Retired at less than full salary	Retired at full salary
09-30-90	13	5	10	0	77	0
09-30-91	15	7	10	0	67	0
09-30-92	14	13	10	2	71	15
09-30-93	16	17	8	3	50	18
09-30-94	15	27	9	14	60	52
09-30-95	14	33	6	18	43	55
09-30-96	15	35	5	17	33	49
09-30-97	16	39	4	18	25	46
04-30-98	17	43	7	18	41	42

^aRounded to nearest whole number.

Source: GAO analysis of AOUSC data.

Weighted Case Filings for Courts that Recalled Magistrate or Bankruptcy Judges, Fiscal Years 1990 to 1997

Table V.1: District Court Weighted Case Filings, in Districts that Recalled at Least One Magistrate Judge, Fiscal Years 1990-1997

Circuit/District	1990	1991	1992	1993	1994	1995	1996	1997
National average^a	427	386	412	419	419	448	472	519
D.C.								
D.C. ^b	306	327	278	274	271	237	251	259
First								
RI	326	316	353	292	283	322	298	308
Second								
NY-N	419	357	414	387	463	452	494	454
NY-W	413	435	506	522	504	510	492	497
Third								
NJ	446	386	382	395	414	449	423	443
PA-E	442	373	387	376	404	405	376	402
Fourth								
SC	451	443	449	501	488	527	520	580
Fifth								
MS-N	381	358	407	465	407	379	428	444
TX-S	695	450	465	457	486	887	503	543
Sixth								
MI-E	355	376	437	397	387	419	459	1,649
OH-N	450	349	370	441	415	424	486	504
OH-S	404	376	411	381	388	395	436	440
Seventh								
IL-C	404	332	331	357	299	371	361	383
Eighth								
MN	353	376	372	403	419	422	458	542
MO-E	457	338	356	382	377	393	441	462
NE	520	353	354	339	353	355	377	410
Ninth								
CA-C	442	362	405	411	407	431	451	424
CA-E	427	376	417	436	465	537	570	601
CA-N	412	352	368	431	438	424	490	492
CA-S	519	517	677	602	560	726	833	814
OR	492	476	464	450	513	572	513	536
WA-E	347	288	261	275	253	264	301	259
Tenth								
NM	542	477	536	562	579	585	651	653
Eleventh								
FL-S	520	507	436	457	464	551	634	605

^aWeighted case filings per authorized district judge.

^bFor each district court, weighted case filings are shown in bold for the year(s) in which the district court had a recalled judge on duty at the end of the fiscal year.

Source: GAO analysis of AOUSC data.

Appendix V

Weighted Case Filings for Courts that Recalled Magistrate or Bankruptcy Judges, Fiscal Years 1990 to 1997

Table V.2: Weighted Case Filings in Bankruptcy Courts that Recalled at Least One Judge, Fiscal Years 1992 and 1994-1997

Circuit/District	1992 ^a	1994	1995	1996	1997
National average	1,437	1,227	1,149	1,272	1,436
Second					
CT	1,662	1,552	1,200	1,404	1,378
NY-E ^b	1,904	1,737	1,682	1,729	1,640
NY-S	1,916	1,271	1,396	1,394	1,510
VT	741	514	536	544	639
Third					
PA-W	1,062	813	752	819	923
Fourth					
NC-M	821	612	675	883	1,062
NC-W	1,470	950	937	1,363	2,321
VA-E	1,935	1,389	1,484	1,631	1,887
Fifth					
LA-E	1,197	948	924	991	1,145
TX-E	1,179	1,218	1,392	1,699	1,838
TX-S	1,484	1,173	1,249	1,392	1,352
Sixth					
KY-E	1,236	802	844	919	1,030
MI-E	2,067	1,811	1,713	1,679	2,104
MI-W	1,215	897	903	1,013	1,266
OH-N	1,032	699	788	747	871
OH-S	1,067	747	815	949	1,009
TN-E	1,100	942	854	1,166	1,306
Seventh					
IL-C	886	654	742	873	1,068
IL-N	1,199	1,130	968	1,179	1,291
IN-N	1,098	791	794	933	1,112
WI-E	619	507	563	800	757
Eighth					
MN	1,487	1,333	1,260	1,452	1,466
Ninth					
CA-C	2,144	2,084	1,859	1,904	1,847
CA-E	1,576	1,542	1,385	1,578	1,813
CA-N	1,828	1,574	1,374	1,431	1,524
HI	779	767	819	1,047	1,237
NV	1,380	1,150	1,120	1,282	1,510
OR	1,050	1,012	916	981	1,043
WA-E	821	645	674	808	969
WA-W	1,267	1,296	1,204	1,466	1,611
Tenth					
NM	1,029	792	681	1,062	1,138
OK-W	930	768	712	1,007	1,198
Eleventh					
AL-N	1,595	1,649	1,843	1,717	1,876

^aFiscal year data were not available for fiscal years 1990, 1991, and 1993.

^bFor each bankruptcy court, weighted case filings are shown in bold for the year(s) in which the bankruptcy court had a recalled judge on duty at the end of the fiscal year.

Source: GAO analysis of AOUSC data.

Comments From AOUSC



LEONIDAS RALPH MECHAM
Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

CLARENCE A. LEE, JR.
Associate Director

WASHINGTON, D.C. 20544

DUANE R. LEE
Office of Program
Assessment

December 16, 1998

Mr. Richard Stana
Associate Director, Administration of Justice Issues
United States General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Stana:

We have reviewed GAO's draft report entitled Federal Judiciary: Information on the Use of Recalled Magistrate and Bankruptcy Judges and have hand-written our corrections and modifications to the text where appropriate (see enclosed).

Although the report makes no findings or conclusions, an uninformed audience might nevertheless read into the report an implication that the judiciary has not tapped a resource available to it when in fact there are inherent limitations to this resource. Therefore, one point that we would like incorporated in the agency's response section of the report is the fact that there are good reasons why recalled judges are not a greater or more predictable resource than they already are, not the least of which is the fact that they must be at least 65 years of age to retire under the Judicial Retirement System.

We appreciated the opportunity to review this document.

Sincerely,

A handwritten signature in dark ink that reads "Duane R. Lee". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Duane R. Lee
Program Assessment Officer

Enclosure

A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

Major Contributors to This Report

General Government
Division

William Jenkins, Jr., Assistant Director

Dallas Field Office

Christopher Conrad, Evaluator-in-Charge
Mary Kay Muse, Senior Evaluator

Office of General
Counsel

Geoffrey Hamilton, Senior Attorney Advisor

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